

to CMRS because customers turn off their phones to conserve battery life. The customer has a need to ensure that during this down time he or she can receive messages. Voice mail becomes an integral part of the total service package offered by the carrier.

Finally, voice mail or short message service can serve the customer when the receiver is unreachable due to network blockage or poor radio reception.<sup>29</sup> For these reasons, voice mail and CMRS short message service perform functions akin to call waiting and call forwarding, namely to complete the communications path to the customer when normal reception is unavailable. The *Order* correctly recognizes that call waiting and call forwarding are necessary to, or used in the provision of, telecommunications service within the meaning of section 222(c)(1)(B). However, it fails to give a reasoned distinction between those services and voice mail or short message service. In fact, many business customers with call forwarding, call waiting and/or caller ID usually obtain voice mail as part of their service. This is a clear indication that customers view voice mail as part of the total service package along with call forwarding and waiting. Indeed, all of these services are necessary components of a state-of-the-art end-to-end communications path for wireless and wireline customers.

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<sup>29</sup> In the CMRS environment, there are situations in which calls cannot get through that are beyond the control of the CMRS provider and the customer. Incomplete calls may be due to the fact that the handset has lost its charge, the handset is not within the coverage area, or the radio signal is masked from the handset (i.e. - the handset is in a tunnel, elevator, or under a bridge).

The *Order* purports to encourage carriers to package services that customers need,<sup>30</sup> yet the restriction on using CPNI to market a service that packages voice mail or short message service will effectively prevent wireline and wireless carriers from identifying customers who would most benefit from such a package, for example, by analyzing call completion statistics. The ability to market packaged services depends not only on a right to package the service but also on the ability of the carrier to inform those customers who probably need it.

**2. The Commission Should Temporarily Forbear From Applying Section 64.2005(b)(1) of the Rules or Section 222(c)(1) of the Act to the Marketing of Voice Mail, Store-and-Forward, and Short Message Services.**

**Section 10(a)(1).** Permitting carriers to use, on a temporary basis, CPNI to market these services would not lead to unreasonableness or discrimination in telecommunications services, because, as the Commission acknowledges, these information services are not telecommunications services.

**Section 10(a)(2).** Such use of CPNI would not have an adverse effect on competition. In fact, permitting carriers to use CPNI in this manner would promote competition for these services by allowing all carriers to market their respective services. This competition for the customer should lead to lower price offerings for specific services to the customer.

**Section 10(a)(3).** The public interest is served when consumers can receive information from their carriers and learn about important service augmentations that will

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CPNI Second Order ¶ 24.

make the use of telecommunications service more efficient. Given the fact that customers already expect these products to be marketed with, or even packaged with, the underlying telecommunications service, and that business customers purchase these services as a group, the public interest would best be served by allowing carriers to continue to use CPNI pending a closer look at how the rules should apply.

**3. A Stay of the Commission's Rules Will Permit the Commission to Take a Closer Look at the Role of Certain Information Services as a Part of the Total Service Approach.**

The *Order* did not closely examine the differences between voice mail or short message service and other information services. The Commission would be justified in concluding, after consideration of a more complete record, that these information services are integral or adjunct to the associated communications service. In the meanwhile, premature enforcement of the restriction based on a questionable interpretation of the statute is likely to confuse and disrupt the carrier-customer relationship.

**III. The Commission Should Temporarily Forbear from, or Stay, Applying Restrictions on the Use of CPNI To Market Enhancements to Packages of Telecommunications Services.**

**A. Enhancements to Telecommunications Packages Are Within the Total Service Approach.**

As the Commission has repeatedly acknowledged, telecommunications customers increasingly desire packaged service offerings that include two or all three of the categories identified in this proceeding—local, interexchange, and CMRS. GTE's own competitive local exchange carrier ("CLEC"), as well as other CLECs (see the attached declaration of Kevin Snyder), intends to pursue a strategy of packaged

service offerings in order to enter into new markets. CLECs believe that this is the most effective way to provide a competitive alternative, *i.e.*, by differentiating their packaged service offerings from the *a la carte* services which ILECs must provide pursuant to tariff.

The *Order* expressly acknowledges that changing customer demands, driven particularly by CLEC marketing strategies, will impact the “total service approach”.

“Although many customers presently obtain their service from different carriers in terms of traditional categories of offerings – local, interexchange, and commercial radio mobile services (CMRS) – with the likely advent of *integrated and bundled service packages*, the “total service approach” accommodates any future changes in customer subscriptions to integrated service.”<sup>31</sup>

“Although the total service approach would still require that we maintain some service distinctions, *unless and until customers subscribe to integrated products*, it facilitates any convergence of technologies and services in the marketplace.”<sup>32</sup>

CLECs are basing their market entry plans upon the offering of integrated service packages and they intend to serve precisely the customers which the *Order* explicitly recognizes should not be bound by rigid service distinctions. For example, once a new CLEC customer subscribes to a service package, that customer will welcome information about any enhancements to the package, irrespective of the service categories defined by regulation. Indeed, this customer information flow is part

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<sup>31</sup> CPNI Second Order, ¶¶ 24 & n. 99 (*citing* ¶ 58) (emphasis added).

<sup>32</sup> *Id.* ¶ 58 (emphasis added).

and parcel to the total service relationship. For example, a customer may initially subscribe to a packaged offering of local and long distance service for \$25 per month. Later the carrier may offer an enhanced package that includes local, long distance, and wireless service for \$35 per month plus 200 free long distance minutes. Customers will expect and desire that the carrier use their CPNI from the initial package to inform them of this potentially much more attractive package.<sup>33</sup>

The *Order* states that “[u]nder the total service approach, the customer’s implied approval is limited to the parameters of the customer’s existing service.”<sup>34</sup> In the case of packaged services, the customer will regard the package, not the individual components, as comprising his or her total service offering. Even if an enhancement to an initial (or partial) package involves adding a service from another category, the customer will continue to consider the relationship with the carrier to be defined by the package itself, not by the regulatory categorization of the package’s components. This situation is distinguishable from a customer who obtains only one service category, or two categories obtained on a stand-alone basis, where, the Commission has concluded that the customer has given implied approval to use CPNI only within the specific category or categories.<sup>35</sup>

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<sup>33</sup> While it is readily apparent that integrated service packages will primarily be offered by CLECs, the same reasoning applies to customers of any telecommunications carrier who specifically subscribe to integrated service packages. As the *Order* correctly recognizes, Congress did not intend that distinctions be made between particular classes of telecommunications carriers with respect to the application of the CPNI rules. *Id.* at ¶ 50.

<sup>34</sup> *CPNI Second Order* ¶ 25.

<sup>35</sup> *CPNI Second Order* ¶ 58

**B. The Commission Should Temporarily Forbear from Restricting the Use of CPNI To Market Service Package Enhancements.**

Temporary forbearance from applying the rules and statute would be appropriate.

**Section 10(a)(1).** Such use of CPNI cannot lead to unreasonable or discriminatory charges or practices because of the discipline of the competitive market place for integrated service packages. Incumbent local carriers will remain bound for now to offer each service under tariff, and therefore a la carte.

**Section 10(a)(2).** Nor will such use of CPNI harm competition because it will, instead, give competitive carriers more effective means to penetrate new markets by reaching the high-value customers who will be interested in packages of services.

**Section 10(a)(3).** Finally, the public interest will be served if consumers can readily be informed of enhancements to integrated service packages, without artificial constraints based on service categories.

**C. A Stay Is Appropriate To Assure that Customers Are Not Deprived of the Benefits of Enhancements to Packaged Offerings.**

Allowing carriers to use CPNI from an initial package to market subsequent, enhanced packages will promote the rapid growth of competition and will give customers information about the greatest variety of choices, without adversely impacting customers' CPNI rights. Yet, the *Order* does not address this other than to speculate that once a carrier has established a customer relationship involving all three packages, "[t]he categories would instead disappear naturally as customers begin purchasing integrated packages, without need for Commission intervention."<sup>36</sup> GTE

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<sup>36</sup>

*Id.*

urges the Commission to take a broader view with respect to integrated packages and treat any such package as establishing a sufficiently comprehensive customer-carrier relationship to obviate the need for customer approval to use CPNI. While this matter is under consideration, the Commission should stay the effectiveness of its interpretation of the statute so as not to hinder such competitive market developments.

**IV. The Commission Should Temporarily Forbear from, or Stay, Applying the Anti-Win-Back Rule, Which Is Inconsistent with the Plain Meaning of the Statute and Violates the Takings Clause of the Constitution.**

In the context of discussing how a carrier may use a customer's CPNI, the Commission adopted a rule, which states "[a] telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider."<sup>37</sup> The Commission concluded that section 222(d)(1) does not authorize a carrier to use CPNI of a former customer because such use is not to "initiate service." In addition, the Commission also stated its belief that such use is not permitted under section 222(c)(1) because such use is not undertaken "in the provision" of service. Therefore, the Commission concluded that customer approval may not be inferred because the use is outside of the customer's existing service relationship within the meaning of section 222(c)(1)(A). For the following reasons, the Commission should forbear from, or stay, these interpretations pending reconsideration.

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47 C.F.R. § 64.2005(b)(3).

**A. The Use of CPNI to Retain and Win Back Customers Is Authorized by Section 222(c)(1) of the Act.**

Initially, and despite the reference in paragraph 85 of the *Order* to a “soon-to-be former” customer, neither the rule, nor the statute prohibit a carrier from using CPNI to retain an *existing* customer who may be contemplating a possible switch to a competitor. Thus, a customer may call a carrier, indicating an intention to switch to another carrier, with the expectation that the first carrier may offer him or her a more favorable plan. With respect to wireless offerings, as experience has shown, when markets become more competitive and customers become more sophisticated, customers will frequently “shop” competing plans among carriers, including their existing service provider, to ensure that they have obtained the best deal.<sup>38</sup> This is, in fact, one of the most favorable results of competition from a customer’s perspective. Under these circumstances, in accordance with the total service approach, the carrier may continue to use such a customer’s CPNI to evaluate whether an alternative plan better meets the customer’s needs.

Even in cases where the customer has terminated service and the carrier knows that customer has switched to another carrier, the Commission’s anti-win back rule is clearly inconsistent with the statute. Nowhere in the statute is there any provision that prohibits a carrier from using CPNI of a customer to win back the former customer. On the contrary, section 222(d)(1) clearly authorizes a carrier to use CPNI in its possession to “render” service to the customer regardless of the status of the customer.

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<sup>38</sup> See Wall Street Journal, “For Wireless Services, Talk Gets Far Cheaper As Competition Rages”, April 27, 1998, p. A1.



Contacting a customer in order to begin the process of rendering service to a former customer falls squarely within the statutory language that authorized CPNI use, even without specific customer approval. Contacting the customer following service disconnection is a typical action involved in “rendering” service to the customer in order to determine why the customer changed service providers and to determine how to improve service in the future. It is also natural for the company, in the context of such follow-up contacts, to attempt to satisfy the customer’s concerns, including offering, for example, a rate plan that may better meet the customer’s needs based upon usage, calling patterns, etc. Subsection (d)(1) clearly authorizes use of CPNI to make a follow-up customer contact. Therefore, the Commission is without power to interpret the statute in a way that is inconsistent with the plain meaning of the statute’s provisions.<sup>39</sup>

Second, the rule the Commission adopted is clearly overbroad because it could be read to prohibit carrier use of CPNI to win back a customer, even though the customer has previously given actual approval to use its CPNI. Section 222(c)(1) clearly permits a carrier to use CPNI of a customer with its approval. As the *Order* recognizes, where the customer has given implied approval for use of CPNI within a service category, that approval remains valid until the customer actually terminates service and notifies the carrier that service has been obtained from a competitor.<sup>40</sup> In

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<sup>39</sup> *Chevron, U.S.A., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Indeed, the Commission does not attempt to explain how the statute does not even address how the follow-up contact it calls a “win-back” situation does not fall within the definition of rendering service.

<sup>40</sup> CPNI Second Order, Rule 64.2005(b)(3) Appendix B-Final Rules, (“A telecommunications carrier may not use, disclose or permit access to a *former* customer’s CPNI to regain the business of the customer *who has switched to another*”

contrast, with respect to actual approval for use of CPNI, such approval need only be obtained once and remains valid until expressly revoked.<sup>41</sup> Therefore, it would be inconsistent with the statute to prohibit use of CPNI during a follow-up or “win back” situation after a customer has granted explicit approval to use such information, until the customer revokes that approval.<sup>42</sup>

Third, prohibiting CPNI use during a follow-up or win back situation is anticompetitive. The clearest and most vital opportunity for competition to work its magic for customers is precisely when the customer is changing carriers. To tie the first carrier’s hands behind its back by prohibiting it from using CPNI that could help it improve its service or to develop a competitive alternative for the customer, deprives a customer of the benefits of competition: obtaining the least costly and most useful service from a carrier. As such, the Commission’s overbroad reading of section 222 is actually antithetical to the main goal of the 1996 Act, which is to promote competition. The Commission should not cripple competition by reducing the opportunity for competitive offers which would benefit consumers. Adopting a rule, as proposed by the Commission, will result in a competitive process that discriminates in favor of the

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(...Continued)  
*service provider.”*) (emphasis added).

<sup>41</sup> CPNI Second Order, Rule 64.2007(f)(2)(ix) Appendix B-Final Rules, (“[A]ny approval ... is valid until the customer affirmatively revokes ,, such approval ...”).

<sup>42</sup> Moreover, to the extent that a customer in writing affirmatively directs or approves disclosure of CPNI to, for example, a carrier’s affiliates, the carrier is *required* pursuant to section 222(c)(2) to make such disclosure.

second carrier with no benefit to the consumer. For all these reasons, the Commission should stay the enforcement of section 64.2005(b)(3).

**B. The Fifth Amendment Guarantees a Carrier's Right To Use CPNI to Retain and Win Back Customers.**

Prohibiting a carrier from using CPNI to win back a customer is an unconstitutional taking of a carrier's property.<sup>43</sup> A customer, together with its information, is an asset of the carrier. A carrier spends substantial resources developing and retaining information about a customer in order to provide quality and continued service to that customer. Indeed, the value of any specific CMRS or wireline market is based, in part, on the number of customers within the market. Restricting a carrier from contacting its former customers seriously impacts this value. The takings clause prohibits the government from taking such property without just compensation.<sup>44</sup>

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<sup>43</sup> CPNI is clearly property in that the carrier expended resources to establish a database of valuable information. In *Ruckelshaus v. Monsanto*, the Supreme Court determined that trade secrets, like certain other intangible property, are deserving of the protection of the Taking Clause. *Ruckelshaus v. Monsanto*, 467 U.S. 986 (1984). In making its ruling, the Court relied heavily on the Restatement definition of 'trade secret.' The Restatement broadly defines a trade secret to include:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

Restatement of Torts § 757, Comment b. CPNI falls squarely within that definition. The record in this proceeding clarifies that "[m]ost carriers acknowledge that they view CPNI as an important asset of their business, and many state that they hope to use CPNI as an integral part of their future marketing plans." *CPNI Second Order* ¶ 23. In fact, the Commission itself has concluded that CPNI is "commercially valuable to carriers." *CPNI Second Order* ¶ 2. This view has arisen because CPNI is a readily available compilation of potential marketing information. Therefore, CPNI is a trade secret. As such, it is protected under the Taking Clause pursuant to *Monsanto*.

<sup>44</sup> *U.S. Const.*, amend V.

Clearly, the Commission has not provided for any compensation for the reduction in value or the destruction of this asset. Furthermore, given that the statute does not specifically authorize such taking, the Commission is not free to interpret a statute in an overbroad manner that will effect that result.<sup>45</sup>

**C. The Commission Should Temporarily Forbear from Applying the Anti-Win-Back Restrictions.**

In the event the Commission is not persuaded to stay its anti-win back rule because of its interpretation of the statute, it should forbear under section 10 of the Communications Act from applying the statute as so interpreted.

**Section 10(a)(1).** First, the rule is not necessary to ensure just and reasonable pricing. Since the rule has nothing to do with pricing, elimination of the rule cannot have any effect on such pricing.

**Section 10(a)(2).** Second, the rule is not necessary for the protection of consumers. In the win-back situation, there are no concerns about customer privacy because the customer has been taking service from the first carrier, perhaps even for an extended period of time. Just as the Commission found that a customer expects a carrier to contact them in order to maintain quality services during the course of providing that service, the customer by implication has consented to the use of that information during follow-up or win-back situations. What's more, use of CPNI to win back the customer is clearly for the customer's benefit if it results in the customer continuing to obtain needed service at the best price. Thus, not only is a customer not

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<sup>45</sup> *Bell Atlantic v. FCC*, 24 F. 3d 1441 (D.C. Cir. 1998).

harm if the Commission forbears from applying the anti-win back rule, the consumer specifically benefits from such action.

**Section 10(a)(3).** Third, elimination of the rule is in the public interest because, the anti-win back rule is anticompetitive, and therefore, inconsistent with the main goal of the 1996 Telecommunications Act and the Commission's procompetition policies. In addition, eliminating the regulation will not have any impact on any other statutory provisions or Commission regulation. Therefore, customers will continue to receive protections guaranteeing reasonable and nondiscriminatory pricing. Competition will not be harmed, because statutory interconnection obligations and other procompetition measures will continue in full force and effect. Therefore, the Commission is clearly justified in forbearing from applying section 222 insofar as the Commission interprets it to prohibit use of CPNI in a win-back situation.

**D. The Commission Should Stay the Anti-Win-Back Restrictions.**

The many legal uncertainties surrounding the anti-win-back rule justify a stay pending further consideration. Premature compliance would interfere with normal marketing practices that can be of great benefit to customers. Such a stay would be in the public interest because it would further the ability of customers to learn about the best service plans to meet their needs. The Commission should develop a more complete record on this issue, and stay its interpretation of the statute pending further consideration.

**V. Conclusion.**

GTE requests that the Commission temporarily forbear from enforcing any applicable provision of the Act, or stay its rules as necessary, at least in the limited

situations described above, in order to avoid customer confusion and disruption during the time required for the Commission to fully consider the issues raised.

Respectfully submitted,

GTE SERVICE CORPORATION, AND ITS  
AFFILIATED DOMESTIC TELECOMMUNICATIONS ,  
WIRELESS, AND LONG DISTANCE COMPANIES

By:

A handwritten signature in black ink, appearing to be "R. Michael Senkowski", written over a horizontal line.

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Its Attorneys

April 29, 1998

State of Georgia,  
County of Fulton, SS.

### **DECLARATION OF MARC LEFAR**

I, Marc Lefar, declare as follows:

1. I am Assistant Vice President - Strategic Marketing and Operations for GTE Wireless Incorporated ("GTEW") and am responsible for strategic marketing functions for GTEW headquarters and field operations. As such, I have personal knowledge of the matters stated below.

#### **I. CPE Used in CMRS**

2. Customer equipment for CMRS<sup>1</sup> is usually provided as a part of the CMRS service package. When customers sign up for CMRS service, they expect to—and usually do—obtain both the handset and the wireless telecommunications service. Later, they expect their carrier to inform them about new services *and* equipment.

3. The CPE is network specific and therefore is linked directly to the specific carrier's network. Every carrier must program the phone with the correct network configuration to ensure that it works directly with its system. Presently, wireless technologies that are offered include GSM 1.9 GHz, analog 800 MHz, digital CDMA 800 MHz, digital TDMA 800 MHz, CDMA 1.9 GHz, and TDMA 1.9 GHz. The near future will see combinations of the 1.9 and 800 digital and analog phones thus further increasing the available technologies. The consumer will become confused if there is no linkage readily available between the service and the CPE.

4. The CMRS carrier (or its agent) must provide a handset, pager, or other CPE that is compatible in frequency and modulation with the customer's CMRS service. The CPE must be specifically programmed for that customer's service including telephone number. This CPE has little or no use or purpose beyond completing the radio communications path for

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<sup>1</sup> Such equipment includes handsets, power cabling, hands-free or car kits, CDPD modems, antennas, batteries, and charging stands.

CMRS and—without reconfiguration—would not be usable for any other CMRS. Although CPE for CMRS may be purchased separately from the CMRS service, compatible, correctly programmed CPE is needed by the customer in order to obtain CMRS service from his or her carrier of choice. The ability of a customer to identify the correct CPE to match the desired service without the assistance of the service provider is extremely limited. Customers consider CPE and CMRS to be part of the same service and typically buy both from the same source at the same time.

5. If the use of CPNI to market CPE to CMRS customers is not allowed, there could be significant service disruption as GTEW upgrades from analog to digital wireless service. Currently, 800 MHz CMRS carriers are converting to digital systems which provide customers with greater clarity, reliability, privacy and new features. In order to upgrade to a digital network, analog spectrum needs to be cleared. This creates extremely limited capacity during transition. In order to manage this transition without significant network blocking, CMRS providers must migrate the heaviest users first. CPNI is the only method to target customers who use analog minutes in an area where a digital system is planned or offered. This information is broken down by cell site and hours of use. Targeting customers by specific cell site usage and moving their analog traffic to digital is key to ensuring the appropriate network quality is maintained and call blockage is minimized.

6. There is an important public safety aspect that lends special urgency to the need for an effective digital migration of high volume users. Many customers rely on wireless service for personal safety and protection in the event of criminal threat, medical emergency, or highway accident. Indeed, for some customers, this is the principal reason to have a cellular phone. Such customers are very low volume users and are not promising candidates for migration to digital nor would they desire typically high priced digital CPE. Yet, if high volume users remain on the analog service, the blockage they cause could have serious consequences for other analog customers trying to get through quickly to 911.

7. It would be extremely confusing to customers if GTEW were to urge customers to migrate to digital service, but could not provide the necessary digital CPE as part of the new digital service. Because existing analog CPE will not work with digital wireless service,



customers would be unlikely to respond to an offer of service without CPE. This would cause the migration effort to fail and would disrupt service to all analog customers. In fact, our experience shows that marketing digital service without a CPE offering does not work. For example, during a recent digital upgrade effort, due to a manufacturer shortage of digital CPE, GTEW marketed digital service without a CPE offering. The digital conversion attempt was not successful in migrating high usage customers. This had a dramatic adverse effect on our digital conversion efforts and resulted in significant blocking levels in some major metropolitan areas.

8. Use of a mass mailing to market digital wireless service to all analog customers is not practical. Due to the fact that capacity management is done at the cell site level, migration efforts must focus on specific user habits in specific locations. Response rates to a mass mailing would clearly not deliver adequate capacity management capability to avoid high blocking levels.

9. Wireless carriers are constantly upgrading services and features, as well as handset capabilities. A service upgrade may require, or be most effective with, a new handset. For example, service plans with a large amount of included minutes may target high volume users and be packaged with phones with long battery life such as handsets with lithium ion batteries or CLA (cigarette lighter adapter) included. Low cost service plans can be packaged with low cost handsets and can be targeted to customers who want service primarily for emergencies. Some customers (not necessarily all) will want to know about any given new offering. Customers will be confused, and carriers handicapped in their ability to provide service, if the carrier cannot use CPNI to identify those customers who are most likely to benefit from a new product. Ultimately, the pace at which innovations enter into the stream of commerce and the hands of the public will be slowed.

## **II. Voice Mail, Store-and-Forward, and Short Message Services<sup>2</sup>**

10. Voice mail and short messaging serve the critical function of receiving messages when a call cannot get through to the receiver. In the CMRS environment, there are many situations in which calls cannot get through that are beyond the control of the CMRS provider and the customer. Incomplete calls may be due to the fact that the handset battery has lost its charge, the handset is not within the coverage area, or the radio signal is masked from the handset (*i.e.*, the handset is in a tunnel, elevator, or under a bridge). The customer's expectation is that the total service offering would get the call or message through to them unless they choose not to be accessible. Voice Mail will receive the call and store it for later retrieval. Short Messaging service holds the alphanumeric page until the handset is recognized by the network and then delivers the page.

11. For these reasons, voice mail and CMRS short message service perform core functions akin to call waiting and call forwarding, namely to complete the communications path to the customer when normal reception is unavailable. Based on our research, many business customers with call forwarding and/or call waiting usually obtain voice mail as part of their service. This is a clear indication that customers view voice mail as part of the total service package along with call forwarding and call waiting. Indeed, all of these services are necessary components of a state-of-the-art end-to-end communications path for wireless customers.

12. The ability to market packaged services depends not only on a right to package the service, but also on the ability of the carrier to inform those customers who probably need it. For example, by using CPNI, a carrier can analyze call completion details to identify customers who may benefit from voice mail. The restriction on using CPNI prevents GTE from effectively identifying customers who would most benefit from such a package. Customers already expect these products to be marketed with, or even packaged with, the underlying telecommunications service.

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<sup>2</sup> Short Message Service is an integration of the pager with Digital service. Digital handsets include a display that will allow a SMS message (alphanumeric page) to be presented to the customer.

I declare under penalty of perjury under the laws of the United States and the State of Georgia that the foregoing is true and correct and that this declaration is executed this twenty-eighth day of April, 1998, at Atlanta, Fulton County, Georgia.



Marc Lefar

State of Texas  
County of Dallas, SS.

**DECLARATION OF ROBERT C. HARVEY**

I, Robert C. Harvey, declare as follows:

1. I am the Group Product Manager for GTE Network Services. My responsibilities include product development and roll-out of Asymmetrical Digital Subscriber Line ("ADSL") service for the GTE telephone operating companies in selected central office locations. As such, I have personal knowledge of the matters stated below.
2. GTE has begun to introduce ADSL as the first of several advanced services. ADSL uses standard phone lines to deliver information at speeds up to 6 megabits per second ("Mbps"). For example, a 4-Mbps modem can download a 60-second video clip in near-real time, a task that takes a 28.8-kbps modem 45 minutes. The technology also allows simultaneous voice and data transmission. This service will enable end users to experience vastly improved Internet access. At the same time, it will prevent the degradation of telephone service for all customers by taking the ever-increasing number of long-duration Internet calls off of the public switched telephone network ("PSTN"). ADSL service gives a virtual private line connection that is on all day, and is separate from the PSTN and does not create any blockage on the PSTN.
3. ADSL, like a number of other advanced services that GTE anticipates offering in the near future, requires specialized customer premises equipment ("CPE"), in this case a modem, to complete the transmission path to the end user's location. ADSL modems are not standardized but must be specific to a particular network and, at least at the initial stages of service delivery, ADSL modems for GTE's network will not be available through retail channels. Due to market uncertainty, during the initial roll-out of ADSL, the modem manufacturer will only

produce a limited quantity of modems which will only be supplied to GTE.<sup>1</sup> After the market develops, this situation may change, but at present the only way an end user can obtain ADSL service is by renting or buying a suitable modem either from the underlying ADSL service provider (GTE) or his Internet Service Provider ("ISP"), to which GTE will make the modems available so that ISPs may make a bundled offering of the service to their customers. A similar limited distribution of CPE is likely during the early phase of other advanced services, such as VDSL (Very High Bandwidth Digital Subscriber Line).

4. ADSL modems are a functional part of the ADSL service, having virtually no use for any purpose other than to complete the transmission path from the end user's location to the ADSL-equipped central office through to the customer's ISP and the Internet. Customers will consider the ADSL modem to be part of the ADSL service and that GTE will make this equipment available either directly or through their ISP.

5. GTE will be marketing ADSL service to ISPs so that they may offer the service to their customers.<sup>2</sup> It is anticipated, however, that end users as well as ISPs may order the service because GTE's anticipated tariff will not include any use and user restrictions. Since these customer are obtaining ADSL service directly from GTE rather than through their ISPs, they will require that GTE make available to them the specialized modems which will provide their connectivity to the Internet.

6. A particular benefit of ADSL service is to migrate end users who formerly used the PSTN for extended calls to an ISP to the permanent virtual connection which ADSL provides separate from the PSTN. This will occur whether these end users obtain ADSL service from their ISP or order it directly GTE. Such migration will help all members of the public by

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<sup>1</sup> Of course, the modem vendor is expected to make its product available to other telephone company providers of ADSL service.

<sup>2</sup> ADSL service will also be marketed to corporate LAN customers which similarly provide Internet connectivity through telecommuting for their employees. If a corporate LAN customer purchases ADSL service for its employee, as with ISPs, GTE will make available the modems to the customer so that the customer may provide them to its employees.

decreasing the likelihood of network blockage.

I declare under penalty of perjury under the laws of the United States and the State of Texas that the foregoing is true and correct and that this declaration is executed this twenty-eighth day of April, 1998, at Irving, Dallas County, Texas.

  
Robert C. Harvey

State of Texas  
County of Dallas, SS.

### DECLARATION OF KEVIN N. SNYDER

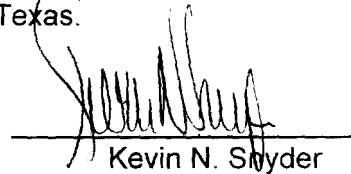
I, Kevin N. Snyder, declare as follows:

1. I am Assistant Vice-President, Product and Process Deployment, for GTE Communications Corporation ("GTECC"), the competitive local exchange carrier ("CLEC") subsidiary of GTE Corporation, and am responsible for the development of products and the support of business processes. As such, I have personal knowledge of the matters stated below.
2. Telecommunications customers increasingly want packaged service offerings that include a mix of local, interexchange and wireless services. GTECC and other CLECs intend to pursue a strategy of packaged service offerings in order to enter into new markets. CLECs believe that this is the most effective way to provide a competitive alternative ,i.e., by differentiating their packaged service offerings from the *a la carte* services which incumbent local exchange carriers ("ILECs") must provide pursuant to tariff.
3. The *Order* expressly acknowledges that changing customer demands, driven particularly by CLEC marketing strategies, will impact the "total service approach" which it adopted. CLECs are basing their market entry plans upon the offering of integrated service packages and they intend to serve precisely those customers which the *Order* explicitly recognizes should not be bound by rigid service distinctions. For example, once a new CLEC customer subscribes to a service package, that customer will welcome information about any enhancements to the package, irrespective of service 'categories' as defined by regulation. Indeed, this client information flow is part and parcel to the total service relationship. For example, a customer may initially subscribe to a packaged offering of local and long distance service for \$25 per month. Later the carrier may offer an enhanced package that includes local, long distance, and wireless service for \$35 per month plus 200 free long distance minutes. Customers will expect and desire that the carrier use their CPNI from the initial package to inform them of this potentially much more attractive package.

4. In the case of packaged services, the customer will regard the package, not the individual components, as comprising his or her total service offering. Even if an enhancement to an initial (or partial) package involves adding a service from another category, the customer will continue to consider the relationship with the carrier to be defined by the package itself, not by the regulatory categorization of the package's components.

5. Allowing carriers to use CPNI from an initial package to market subsequent, enhanced packages will promote the rapid growth of competition and will give customers information about the greatest variety of choices without adversely impacting the customer's CPNI rights.

I declare under penalty of perjury under the laws of the United States and the State of Texas that the foregoing is true and correct and that this declaration is executed this twenty-eighth day of April, 1998, at Irving, Dallas County, Texas.



Kevin N. Snyder